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No. 94-1941

In the
Supreme Court of the United States
OCTOBER TERM, 1994

UNITED STATES OF AMERICA,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA, *et al.*,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF THE STATES OF MARYLAND, HAWAII, MASSACHUSETTS, NEVADA, AND OREGON, AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does Virginia's refusal to admit women to a state-operated military college fail to serve any legitimate state objective and thus violate the Equal Protection Clause of the Fourteenth Amendment?

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Pursuant to Sup. Ct. R. 37, the signatory States respectfully submit this brief as *amici curiae* in support of petitioner.

INTEREST OF *AMICI CURIAE*

This case involves fundamental issues of fairness that affect one of the most basic obligations of the *Amici* States: the duty to provide and otherwise ensure equal access to educational opportunities for all citizens. Stating that "education is perhaps the most important function of state and local governments," this Court over forty years ago recognized that no "child may reasonably be expected to succeed in life if he [or she] is denied the opportunity of an education." *Brown v. Board of Education*, 347 U.S. 483, 493 (1954). This core governmental obligation extends to higher education, *see United States v. Fordice*, 112 S.Ct. 2727 (1992); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982), and encompasses the right of women to receive equal access to an education specially tailored to prepare them for military service.

Women are entitled to choose a military career and are likewise entitled to the same educational and training opportunities made available to men. The presence of women in the United States military has expanded significantly in recent years, and so have their opportunities in all areas of the armed forces. Indeed, as Judge Motz pointed out in dissenting from denial of rehearing *en banc*, the United States has eliminated its rule excluding women from combat duty because "the rule was an 'armor-plated ceiling' preventing the advancement of women in the military." App. 257a. *Amici* agree with Judge Motz, who stated that "[a]nyone who is prepared to do combat for her country -- indeed, to be killed in preparation for that combat -- should be eligible to apply for what she perceives to be the best possible training." App. 257a.

While the need to make that training available to women is more acute today than at any time in the past,

opportunities for a military-oriented education are severely restricted. There are only five United States military academies, two State military institutions (including one that is a party in this case), and one private university whose missions are to provide an undergraduate military education.[1] These schools "offer[] a unique combination of education and training that makes a positive contribution offered by no other institution," App. 151a; *see also, e.g., Jones v. Faulkner*, 858 F.Supp. 552, 556 (D.S.C.1994), *modified*, 51 F.3d 440 (4th Cir.), *cert. denied*, 64 U.S.L.W. 3284 (1995), and their graduates are likely to have successful military careers. *See* App. 137a-138a ("Among the thousands of [VMI] alumni who have served this country during war is General of the Army George C. Marshall, and six have been awarded the Congressional Medal of Honor.").

Yet, while each of the United States military academies admits women, VMI and The Citadel refuse to do so. Thus, over 5,000 fewer openings presently are available to women interested in a military career than are available to men. *See* 1995 Higher Education Directory at 323 (showing total enrollment of 4,263 men at The Citadel); *id.* at 374 (enrollment of 1,191 men at VMI). The *Amici* States have

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[1] The United States military academies consist of the Air Force Academy in Colorado Springs, Colorado, the Coast Guard Academy in New London, Connecticut, the Merchant Marine Academy in Kings Point, New York, the Military Academy in West Point, New York, and the Naval Academy in Annapolis, Maryland. Each of these institutions is co-educational. *See* 1995 Higher Education Directory at 394-395. The Virginia Military Institute, The Citadel in Charleston, South Carolina, which are both male-only, and Norwich University, a privately operated, co-educational institution in Northfield, Vermont, appear to be the only other military-oriented schools at which a four-year undergraduate degree can be obtained.

a strong interest in the right of their women citizens to be afforded equal access to these limited educational opportunities.

STATEMENT

The record in this case demonstrates that Virginia has no legitimate state interest in refusing to admit women, and that its reasons for doing so are a pretext for preserving a tradition of outdated gender stereotypes that serve no lawful role in modern society.

The United States initiated this action in 1990, challenging the male-only admissions policy of the Virginia Military Institute (VMI), a state institution founded in 1839, on the ground that it violates the Equal Protection Clause of the United States Constitution. The United States District Court for the Western District of Virginia upheld VMI's exclusion of women. App. 158a. On appeal, the United States Court of Appeals for the Fourth Circuit vacated and remanded. Stating its agreement with "the district court's factual determinations that VMI's unique methodology justifies a single-gender policy and material aspects of its essentially holistic system would be substantially changed by coeducation," the court of appeals nevertheless held that "Virginia has failed to articulate an important objective which supports the provision of this unique educational opportunity to men only. . . ." App. 137a. The court of appeals remanded the case with instructions to the district court "to give to the Commonwealth the responsibility to select a course it chooses, so long as the guarantees of the Fourteenth Amendment are satisfied." App. 156a.

VMI filed a petition for certiorari seeking review of the court of appeals' decision; the petition was denied on May 24, 1993. App. 132a. On remand, Virginia proposed a parallel program for women, to be offered at Mary Baldwin

College, a private women's undergraduate institution. The district court acknowledged that "if 'separate but equal' is the standard by which the Commonwealth's plan must be measured, then it surely must fail, because . . . even if all else were equal between VMI and the Virginia Women's Institute for Leadership ('VWIL'), the VWIL program cannot supply those intangible qualities of history, reputation, tradition, and prestige that VMI has amassed over the years." App. 60a (footnote omitted). In addition, the district court found that the programs were *not* equal in more tangible respects: "VMI offers an engineering degree as well as several advanced math and physics courses that VWIL will not offer. . . ." App. 65a. Nonetheless, the district court found that the VWIL program excused VMI's refusal to admit women, because "it is sufficient that the Commonwealth provide an all-female program that will achieve substantially similar outcomes in an all-female environment and that there is a legitimate pedagogical basis for the different means employed to achieve the substantially similar ends." App. 76a.

On appeal, the court of appeals affirmed in a 2-1 decision. The court upheld VMI's continued exclusion of women, finding that "single-gender education constitutes a legitimate and important governmental objective," App. 18a, and that the separate educational programs available at VMI and VWIL collectively ensure that "the opportunities that would be open both to men and women are sufficiently comparable." App. 28a. The panel majority acknowledged that neither the proposed VWIL program for women nor a VWIL degree had the same historical tradition and prestige as VMI and the VMI degree. App. 27a. But the court found no constitutional objection in "this deficiency," *id.*, or in any of the other differences in the educational benefits that the programs respectively offer to women and men.

Judge Phillips dissented, asserting that the VWIL program falls "far short" of "providing substantially equal tangible and intangible benefits to men and women," and that "the contrast between the two [programs] on all the relevant tangible and intangible criteria is so palpable as not to require detailed recitation." App. 50a.

Judge Motz, joined by Judges Hall, Murnaghan, and Michael, dissented from the court of appeals' denial of rehearing *en banc*.[2] Stating that "simply providing single-gender education cannot constitute a state's legitimate and important objective for excluding one gender from a state-financed institution," App. 253a, Judge Motz observed that "[n]othing suggests, let alone provides an 'exceedingly persuasive justification,' that VMI's male-only admissions policy and 'sexually homogenous environment' are necessary to further [its] mission." App. 254a. Rather, the United States military academies, which are all co-educational, produce far more graduates who are leaders in military and civilian life than VMI does. *Id.*

SUMMARY OF ARGUMENT

In upholding VMI's longstanding historical exclusion of women, the court of appeals has revived wholly discredited doctrine from a bygone era; relied upon antiquated gender stereotypes to reach an intolerable result; and opened issues that have long (and properly) been closed in our constitutional jurisprudence. VMI's continued refusal to admit women violates the Equal Protection Clause because there is no legitimate governmental interest that justifies

[2] None of these judges was a member of the panel that decided this case. As a result of a typographical error, the appendix to the United States' petition in No. 94-1941 inadvertently failed to state that Judge Hall joined in Judge Motz's dissent. *See* 52 F.3d 90, 94 (4th Cir.1995).

such discriminatory and plainly unacceptable conduct. This Court should require VMI either to allow women to attend as men have for the past 156 years, or to close its doors.

ARGUMENT

VMI'S FAILURE TO ADMIT WOMEN IS UNCONSTITUTIONAL BECAUSE IT DOES NOT SERVE ANY LEGITIMATE STATE INTEREST

Under this Court's well-established equal protection jurisprudence, VMI must show, at a minimum, that its refusal to admit women "serve[s] important governmental objectives. . . ." *Wengler v. Druggists Mutual Insurance Co.*, 446 U.S. 142, 150 (1980) (citations omitted).[3] As this

[3] This Court has not decided whether discrimination on the basis of gender is subject to strict scrutiny. *See J.E.B. v. Alabama ex rel. T.B.*, 114 S.Ct. 1419, 1425 n.6 (1994). This issue need not be resolved in this case because VMI cannot show that its discriminatory treatment of women serves any important governmental objective. This Court also need not address the question previously reserved in *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 720 n.1 (1982), "of whether States can provide 'separate but equal' undergraduate institutions for males and females," because given the significant differences that exist between VMI and the alternative program that VMI has proposed for women, "[i]t is difficult to believe that one who had a free choice between these . . . schools would consider the question close." *Sweatt v. Painter*, 339 U.S. 629, 634 (1950). As Judge Motz stated below, "how can a degree from a yet to be implemented supplemental program at Mary Baldwin be held 'substantively comparable' to a degree from a venerable Virginia military institution that was established more than 150 years ago?" App. 255a. Indeed, she pointed out, even "the majority acknowledges, in almost epic understatement, the alternative degree from Mary Baldwin 'lacks the historical benefit and prestige of a degree from VMI.'" *Id.* (*quoting* App. 27a). The panel majority apparently thought that this critical shortcoming

Court's cases provide, "gender-based classifications require 'an exceedingly persuasive justification' in order to survive constitutional scrutiny." *J.E.B. v. Alabama ex rel. T.B.*, 114 S.Ct. 1419, 1425 (1994) (*quoting Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 273 (1979)). The decision below should be reversed because Virginia has failed to meet its heavy burden of satisfying these criteria.

VMI has no legitimate governmental objective in refusing to admit women. The court of appeals found as much in its first decision, stating that VMI "failed to articulate an important policy that substantially supports offering the unique benefits of a VMI-type of education to men and not to women." App. 155a. Nevertheless, the court subsequently stated in its second decision that it "should defer to a state's selection of educational techniques when we conclude, as we do here, that the purpose of providing single-gender education is not pernicious and falls within the range of the traditional governmental objective of providing citizens higher education." App. 21a-22a. There are at least two fundamental flaws in this analysis.

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was outweighed by "the benefits of single-gender education," stating that "[i]t is inherent in the benefit that men must be excluded from the women's program and women from the men's." App. 23a. But as this Court held in rejecting a similar argument, "[i]t is unlikely that a member of a group . . . attending a school with rich traditions and prestige which only a history of consistently maintained excellence would command, could claim that the opportunities afforded him for . . . education were unequal to those held open to petitioner." *Sweatt v. Painter*, 339 U.S. at 634-635. This case presents no serious debate, therefore, that "[t]he proposed alternative program offers no remotely similar, let alone 'substantively comparable,' experience" to that which VMI affords men. App. 255a (Motz, J., dissenting).

First, Virginia's ostensible interest in single-gender education is a fiction. Like the law school for blacks in *Sweatt v. Painter*, 339 U.S. 629, 631-632 (1950), that was created after a trial court held that the University of Texas Law School unconstitutionally denied admission to a black student, the creation of VWIL is "a stratagem to achieve the Commonwealth's real objective -- preservation of VMI, with its 'adversative' training and culture, from the unwelcome intrusion of women." App. 253 n.3 (Motz, J., dissenting).

There is simply *no* evidence in support of the court of appeals' erroneous assumption that the purported objective of single-sex education "is the actual purpose underlying the discriminatory classification." *Mississippi Univ. for Women v. Hogan*, 458 U.S. at 730 (footnote omitted). While the court of appeals felt that "deference is to be accorded the state's legislative will," App. 18a, this Court has consistently held that a federal court "need not in equal protection cases accept at face value assertions of legislative purposes, when an examination of the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation." *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n.16 (1975) (citations omitted). *See also Mississippi Univ. for Women v. Hogan*, 458 U.S. at 728; *Califano v. Westcott*, 443 U.S. 76, 86-88 (1979); *Califano v. Goldfarb*, 430 U.S. 199, 210-11 (1977).

VMI's history of denying admission to women is not the result of a considered analysis of the pros and cons of single-sex education. Indeed, if single-gender education were truly Virginia's goal, the Commonwealth would have devised a parallel VMI program for women long before being forced to do so by this litigation. Rather, as Judge Phillips stated in dissent, VMI's "original men-only policy . . . simply reflected the unquestioned general understanding

of the time about the distinctly different roles in society of men and women." App. 33a. VMI's continued implementation of that policy advances no legitimate state interest but rather, as discussed more fully below, perpetuates "the very sort of archaic and overbroad generalizations about women . . . found insufficient to justify a gender-based classification." *Mississippi Univ. for Women v. Hogan*, 458 U.S. at 730 n.16.

Moreover, even if the record supported the court of appeals' conclusion that single-gender education were the true objective of VMI's discriminatory policy, as this case vividly shows, that objective is not "legitimate and important. . . ." *Mississippi Univ. for Women v. Hogan*, 458 U.S. at 725. The admission -- and growing presence -- of women in the military and at all of the United States military academies cast considerable doubt on, if not outright refute, VMI's claim that its male-only environment is somehow necessary to achieve successful military and civilian leadership skills.

This Court has stated that "[*i*]*n limited circumstances*, a gender-based classification favoring one sex can be justified if it intentionally and directly assists members of the sex that is disproportionately burdened." *Id.* at 728 (emphasis added). Conversely, "[a] gender-based classification which . . . generates additional benefits only for those it has no reason to prefer cannot survive equal protection scrutiny." *Orr v. Orr*, 440 U.S. 268, 282-283 (1979).

Thus, the Court has upheld a statutory scheme that computed old-age insurance benefits on the basis of the wage earner's gender, because it "operated directly to compensate women for past economic discrimination." *Califano v. Webster*, 430 U.S. 313, 318 (1977). The Court has similarly approved a statute that provided female naval

officers more time than male officers to be promoted or else be subject to mandatory discharge, based on "the demonstrable fact that male and female line officers in the Navy are *not* similarly situated with respect to opportunities for professional service." *Schlesinger v. Ballard*, 419 U.S. 498, 508 (1975) (emphasis in original). Likewise, in *Kahn v. Shevin*, 416 U.S. 351 (1974), the Court upheld the validity of a property tax exemption for widows "designed to further the state policy of cushioning the financial impact of spousal loss upon the sex for whom that loss imposes a disproportionately heavy burden." *See also Rostker v. Goldberg*, 453 U.S. 57 (1981); *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464 (1981) (plurality).

In contrast to the narrow exception represented by these cases, this Court has struck down gender-based classifications in virtually all of the other cases in which it has addressed such classifications in the last 25 years.[4]

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[4] *See J.E.B. v. Alabama ex rel. T.B.*, 114 S.Ct. 1419 (invalidating peremptory challenges on the basis of gender); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (exclusion of males from state-supported professional nursing school held unconstitutional); *Kirchberg v. Feenstra*, 450 U.S. 455 (1981) (striking down Louisiana statute giving husband unilateral right to dispose of jointly owned property without spouse's consent); *Wengler v. Druggists Mutual Insurance Co.*, 446 U.S. 142 (1980) (finding unconstitutional Missouri law requiring a widower, but not a widow, to show mental or physical incapacitation to receive benefits with respect to spouse's work-related death); *Califano v. Westcott*, 443 U.S. 76 (1979) (invalidating social security statute providing AFDC benefits when deprivation of parental support is due to unemployment of the father but denying those benefits when the mother is unemployed); *Caban v. Mohammed*, 441 U.S. 380 (1979) (finding New York law violated equal protection principles in requiring an unwed mother, but not an unwed father, to consent to child's adoption); *Orr v. Orr*, 440 U.S. 268 (1979) (holding as

These decisions collectively illustrate the extreme difficulty that a governmental body faces in establishing "an exceptionally persuasive justification for its gender-based" classification. *J.E.B. v. Alabama ex rel. T.B.*, 114 S.Ct. at 1426. This case falls far short of the narrow exception to this Court's largely prohibitive rule governing the validity of gender-discriminatory classifications, as it presents no circumstances demonstrating that VMI's exclusion of women fulfills any legitimate governmental goal.

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unconstitutional Alabama statutes imposing alimony obligations on husbands but not wives); *Califano v. Goldfarb*, 430 U.S. 199 (1977) (plurality) (invalidating federal statute conditioning the right of a widower, but not a widow, to receive survivor benefits on a showing that he received financial support from deceased spouse); *Craig v. Boren*, 429 U.S. 190 (1976) (equal protection denied by Oklahoma statute imposing higher age limitation on males than on females with respect to the sale of beer); *Stanton v. Stanton*, 421 U.S. 7 (1975) (striking down Utah statute requiring support payments until the age of 21 male children but only until the age of 18 for female children); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975) (invalidating social security statute providing benefits to a deceased's widow and minor children but not to a deceased's widower); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (plurality) (finding equal protection violation caused by federal statute conditioning medical benefits for the spouse of a servicewoman on a showing that her spouse is dependent upon her for one-half of his support, but imposing no similar support requirement for a serviceman's spouse); *Stanley v. Illinois*, 405 U.S. 645, 658 (1972) (equal protection violated by Illinois statutory scheme denying an unwed father a hearing accorded to all other parents on his fitness as a parent upon the death of his children's mother); *Reed v. Reed*, 404 U.S. 71 (1971) (holding invalid Idaho statute giving automatic preference to males over females in administering relative's estate). *See also Taylor v. Louisiana*, 419 U.S. 522 (1975) (striking down Louisiana law excluding women from jury service).

The court of appeals explicitly found that "neither the goal of producing citizen soldiers nor VMI's implementing methodology is inherently unsuitable to women. . . ." App. 155a. In this case, therefore, there is no relationship between the exclusion of women and the purposes that VMI advances, as "the sex characteristic . . . bears no relation to ability to perform or contribute to society." *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality opinion). Simply put, VMI is no more excused in educating only members of one sex than it is in conferring educational benefits only on members of one race or national origin. *See Sweatt v. Painter*, 339 U.S. 629.

The decision below confirms that, rather than serve a legitimate purpose, VMI's refusal to open its door to women operates only to further "the State's purpose of fostering 'old notions' of role typing and preparing boys for their expected performance in the economic and political worlds." *Craig v. Boren*, 429 U.S. 190, 198 (1976) (*quoting Stanton v. Stanton*, 421 U.S. 7, 14-15 (1975)). Stating that "[t]he classification for single-gender education at VMI is . . . directly related to achieving the results of an adversative method in a military environment," the court of appeals expressed concern that "[i]f we were to place men and women into the adversative relationship inherent in the VMI program, we would destroy, at least for that period of the adversative training, any sense of decency that still permeates the relationship between the sexes." App. 23a. This sentiment "carries with it the baggage of sexual stereotypes" this Court has long condemned, *Orr v. Orr*, 440 U.S. at 283, and is based on outdated "fixed notions concerning the roles and abilities of males and females." *Mississippi Univ. for Women v. Hogan*, 458 U.S. at 725.

The court of appeals' decision demonstrates in other ways that VMI's refusal to admit women "is another

example of 'overbroad generalizations' in gender-based classifications." *Caban v. Mohammed*, 441 U.S. at 394. As the court of appeals stated, while a "task force concluded that VMI's military model, especially the adversative method, would not be effective for women *as a group*, . . . the task force concluded that *some* women would be suited to and interested in experiencing a 'women's VMI.'" App. 8a (emphases added). The court of appeals also acknowledged "that *some* women can meet the physical standards now imposed on men," App. 146a (emphasis in original), and that "[n]o other aspect of the program has been shown to depend upon maleness. . . ." App. 152a.

It is apparent from this evidence that not *all* women would reject VMI's adversative training method, just as it is evident that not *all* women would fail to satisfy VMI's physical training requirements. In contrast, the evidence below suggested that "many men would not want to be educated in such an environment." App. 257a (Motz, J., dissenting). Yet, any man, regardless of his interest in attending VMI and his qualifications to do so, may be considered for admission to VMI while no woman may, despite her interest and abilities.[5]

As these facts strongly suggest, VMI's admissions policies "reflect out-moded notions of the relative capabilities of men and women." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 441 (1985). "The Equal Protection Clause, as interpreted by decisions of this Court, acknowledges that a shred of truth may be contained in some stereotypes, but requires that state actors look

[5] Despite the fact that VMI "has never accepted applications from women," the court of appeals noted that "[d]uring the two years preceding the filing of this action, it did . . . receive over 300 inquiries from women." App. 141a.

beyond the surface before making judgments about people that are likely to stigmatize as well as to perpetuate historical patterns of discrimination." *J.E.B. v. Alabama ex rel. T.B.*, 114 S.Ct. at 1427 n.11.[6] Given that VMI admissions officials already consider each applicant's qualifications (as admissions officials routinely do at other schools), VMI can easily "adopt procedures for identifying those instances where the sex-centered generalization actually comported with fact." *Craig v. Boren*, 429 U.S. at

[6] The court of appeals cited expert testimony to justify its conclusion that men and women react differently to, and thus should not have equal opportunities to receive, adversative training. The court observed that "[t]he possibility of adapting the adversative methodology to women, setting woman against woman with the intended purpose of breaking individual spirit and instilling values, could succeed only if it is true that women, subjected to the same grating of mind and body, respond in the same way men do. . . ." App. 26a. Stating that "[e]ducational experts for the Commonwealth testified that women *may* not respond similarly," App. 27a (emphasis added), the court observed that "[t]he United States did not offer sufficient evidence to lead us to conclude that the Commonwealth's expert testimony was clearly erroneous in this regard." *Id.* Aside from erroneously placing the burden on the United States to show that the VMI and VWIL programs are *not* comparable -- "[t]he burden . . . is on those defending the discrimination to make out the claimed justification," *Wengler v. Druggist Mutual Insurance Co.*, 446 U.S. at 151 -- the court of appeals incorrectly swept aside the settled principle "that gender classifications that rest on impermissible stereotypes violate the Equal Protection Clause, even when some statistical support can be conjured up for the generalization." *J.E.B. v. Alabama ex rel. T.B.*, 114 S.Ct. at 1427 n.11. As set forth above, the fact that *some* women may not respond positively to the adversative training methodology does not excuse VMI from refusing to consider *any* women for admission.

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As in these cases, "[t]here is no reason, therefore, to use sex as a proxy. . . ." *Orr v. Orr*, 440 U.S. at 281. Instead of fulfilling any legitimate governmental interest, VMI's exclusion of women constitutes "the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment." *Reed v. Reed*, 404 U.S. at 76. "Indeed, the classification . . . is in some ways more pernicious." *Weinberger v. Weisenfeld*, 420 U.S. at 645. In the last year alone, the Commonwealth of Virginia provided over $10 million in funding to VMI. App. 256a. Thus, each Virginia woman who pays taxes has been "deprived of a portion of her own earnings in order to contribute to the fund out of which benefits would be paid to others." *Weinberger v. Weisenfeld*, 420 U.S. at 645.

In denying women the right to receive what they believe to be the best military training available, VMI's exclusionary policy has the twin effect of exacerbating "disadvantageous conditions suffered by women in economic and military life," *Craig v. Boren*, 429 U.S. at 198 n.6, and perpetuating "the role-typing society has long

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[7] *See also Wengler v. Druggists Mutual Insurance Co.*, 446 U.S. at 152 ("[T]he requisite showing has not been made here by the mere claim that it would be inconvenient to individualize determinations about widows as well as widowers."); *Taylor v. Louisiana*, 419 U.S. 522, 535 (1975) ("[I]t may be burdensome to sort out those who should be exempted [from jury service] from those who should serve. But that task is performed in the case of men, and the administrative convenience in dealing with women as a class is insufficient justification for diluting the quality of community judgment represented by the jury in criminal trials."); *Frontiero v. Richardson*, 411 U.S. at 689-690; *Stanley v. Illinois*, 405 U.S. 645, 656-658 (1972).

imposed." *Stanton v. Stanton*, 421 U.S. at 15. Indeed, given Virginia's proposal to provide a single-gender women's institution that is "but a pale shadow of VMI," App. 50a (Phillips, J., dissenting), VMI's "admissions policy actually penalizes the very class the State purports to benefit." *Mississippi Univ. for Women v. Hogan*, 458 U.S. at 729 n.15. *See also Califano v. Goldfarb*, 430 U.S. at 209 n.8.

Stating twenty years ago that "[c]oeducation is a fact, not a rarity," this Court in *Stanton v. Stanton* struck down a Utah statute that interfered with the right of females to receive the same "education and training" as males. 421 U.S. at 15. As was the statute in that case, VMI's exclusion of women is a relic of the past that inflicts great social harm while simultaneously serving no useful purpose. The time has come to end VMI's historic denial of equal educational opportunities to women.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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